

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKUSDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 07/24/2017PAVLE ZIVKOVIC, on behalf of himself
and others similarly situated,Plaintiff,
v.

17 CIV. 553 (GHW)

LAURA CHRISTY LLC d/b/a
VALBELLA, LAURA CHRISTY
MIDTOWN LLC, DAVID
GHATANFARD, and GENCO LUCA

Defendants.

STIPULATION AND (PROPOSED) ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between the Parties in the above captioned action, that:

- (A) Notice of Pendency of this Lawsuit and opt-in forms shall be sent to current and former front-of-the-house, tipped, food-service employees, including without limitation, captains, servers, runners, bussers and bartenders, employed by Laura Christy LLC d/b/a Valbella and Laura Christy Midtown LLC between May 25, 2014 and the present (“Potential FLSA Collective Members”);
- (B) Defendants shall furnish, to Joseph & Kirschenbaum LLP (JK), a list containing the names, last known addresses, all known phone numbers and all known email addresses of all Potential FLSA Collective Members within ten (10) days of the date the Court “So Orders” this Stipulation.
- (C) JK shall send the Notice of Pendency of this Lawsuit within twenty (20) days following the date the Court “So Orders” this Stipulation;
- (D) Notice shall be provided in the form attached hereto as Exhibit “A”;

- (E) Notice, together with stamped return envelopes addressed to Plaintiffs' Counsel, shall be sent, via First Class Mail, utilizing the United States Postal Service;
- (F) Notice shall also be sent via email to Potential FLSA Collective Members;
- (G) The subject line of the email to Potential FLSA Collective Members shall state: "Notice of Lawsuit Against Valbella." The body of the email to Potential FLSA Collective Members shall state "If you worked as a captain, server, runner, busser or bartender at Valbella Meatpacking or Valbella Midtown at any time from May 25, 2014 to the present, you may be able to join a lawsuit claiming unpaid wages. For additional information about the case, including how to join, please call (212) 688-5640 or visit: <https://www.jhllp.com/valbella-class-notice.html>. You should read the attached notice carefully because it also advises you of potential conflicts of interest between you and Pavle Zivkovic and his lawyers."
- (H) For those individuals that Defendants produce email addresses, JK shall email them on two occasions: (1) within twenty (20) days following the date the Court "So Orders" this Stipulation, and (2) within fifty (50) days following the date the Court "So Orders" this Stipulation.
- (I) To participate herein, Potential FLSA Collective Members must opt-in no later than forty-five (45) days after the date of the original mailing, emailing of the notice by returning the executed form entitled "Consent to Join," appended hereto as Exhibit "B" to Plaintiffs' counsel by or before that date. Plaintiffs' counsel thereupon promptly shall file executed consents with the Court;

(J) The Notice shall be posted in a conspicuous location at both Valbella Meatpacking and Valbella Midtown in New York City for sixty (60) days starting five (5) after the date of the date this Stipulation is So Ordered by the Court; and

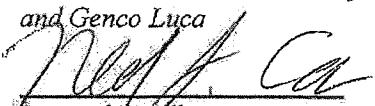
(K) Defendants reserve their right to challenge the composition of the Potential FLSA Collective Members on the grounds that the proposed members are not similarly situated, or for any other reason, at any point during the discovery or post-discovery period, whether by motion for decertification pursuant to 29 U.S.C. § 216(b) or any other procedural mechanism.

Dated: New York, New York
July 17, 2017

JOSEPH & KIRSCHENBAUM, LLP
Attorneys for Plaintiffs


Josef Nussbaum
D. Maimon Kirschenbaum
32 Broadway, Suite 601
New York, New York 10004
(212) 688-2548

HAROLD SALANT STRASSFIELD
& SPIELBERG
*Attorneys for Defendants Laura Christy
Midtown LLC, David Ghatanfar,
and Genco Luca*


Leonard Spielberg
Neal Comer

DEALY SILBERSTEIN
& BRAVERMAN, LLP
Attorneys for Defendant Laura Christy LLC


Milo Silberstein
Maria Louisa Bianco
225 Broadway, Suite 1405
New York, New York 10007
(212) 385-0066

The Court approves this stipulation, provided that the parties correct the typographical error in the final sentence of Exhibit B (i.e., delete the additional "I").

SO ORDERED.

Dated: July 24, 2017
New York, New York


GREGORY H. WOODS
United States District Judge

EXHIBIT A

NOTICE OF WAGE & HOUR LAWSUIT

TO ALL INDIVIDUALS WHO WORK, OR FORMERLY WORKED, AS TIPPED EMPLOYEES AT VALBELLA RESTAURANTS BETWEEN MAY 25, 2014 AND THE PRESENT

The purpose of this Notice is to advise you under the federal Fair Labor Standards Act (“FLSA”) that a lawsuit has been filed against Valbella Midtown and Valbella Meatpacking and to advise you of your legal rights in connection with that suit. If you are or were employed as server, busser and/or runner at Valbella at any time from May 25, 2014 to the present, please read this notice.

This is a Court authorized Notice. This is not a solicitation from a lawyer

1. DESCRIPTION OF THE LAWSUIT

Plaintiff Pavle Zivkovic, (“Plaintiff” or “Zivkovic”), on behalf of himself and other tipped employees, including servers, bussers and runners, who he contends are similarly situated, filed this lawsuit against Valbella Midtown and Valbella Meatpacking in Manhattan. The Lawsuit is filed in the Southern District of New York, Index Number 17-cv-553. In the portion of the lawsuit brought under the FLSA, Plaintiff alleges that Defendants did not pay him and other service employees for all the hours they worked, including overtime. The lawsuit also alleges that Defendants were not entitled to pay service employees pursuant to a tip credit. The lawsuit seeks money allegedly owed in back wages, additional damages known as “liquidated damages,” interest, attorneys’ fees, and costs.

Defendants deny that they violated any laws including the Fair Labor Standards Act, and maintain that all employees have been paid properly, and further assert that Zivkovic should not be representing other tipped employees because his interests are potentially in conflict with other tipped employees because defendants allege, among other things, that Zivkovic stole tips from his fellow employees.

This lawsuit is currently in the early pretrial stage. The Court has made no finding on the merits of Plaintiff’s claims or Defendants’ various defenses thereto. Defendants reserve all their rights.

2. YOUR RIGHT TO MAKE A CLAIM IN THIS LAWSUIT

If, at any time within the last three years *i.e.* after May 25, 2014, you worked for Defendants as a server, runner or busser and believe that you were not paid properly for all the time you worked, including overtime, you may join this lawsuit. To join the lawsuit you must sign the enclosed written Consent form to be a “party-plaintiff” in the lawsuit. This form will be filed with the Court.

It is entirely your decision whether or not to join the lawsuit. If you do file the consent to join this lawsuit, it is against the law for the Restaurant to retaliate against you (by for example firing you, reducing your hours or lowering your wages) for doing so.

3. THE CONSENT FORM

If you believe that Defendants did not pay you for all the hours you worked, including for overtime hours, and/or you believe the restaurant did not notify you that you would be paid a tip credit minimum wage, you have the right to join this lawsuit (that is, you may “opt-in”). To join this lawsuit, fill out and send the form attached to this notice, which is entitled “Consent to Join,” to the Plaintiff’s attorney using the enclosed envelope.

If you want to join the lawsuit, your consent form must be postmarked, faxed or emailed to Plaintiffs’ counsel, no later than **45 days from the mailing of notice**. If you do not wish to join or to participate in the lawsuit, you should not fill out and return this form.

4. COMPOSITION OF THE CLASS

As noted above, Plaintiff brought this lawsuit on behalf of himself and also on behalf of tipped employees with whom he claims to be similarly situated. Zivkovic asserts, solely for the purpose of disseminating this Notice that Plaintiff is similarly situated to other present and former servers, bussers and runners who were paid as employed at the Defendants between May 25, 2014 and the present. The defendants deny that Zivkovic is similarly situated to other tipped employees because his interests are potentially in conflict with other tipped employees because defendants allege, among other things, that Zivkovic stole tips from his fellow employees.

Defendants have reserved their right to seek “decertification” prior to trial, meaning that should this matter be decertified, Plaintiff would not be entitled to represent anyone joining the lawsuit at trial, and individuals who had previously joined by filing the attached Consent would then have the option to prosecute their own claims.

5. EFFECT OF JOINING THIS LAWSUIT

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable. Should you decide to join this case, you will be subject to discovery obligations, which may include providing deposition or trial testimony under oath, responding to document requests, and/or responding to requests for information. In making your decision about allowing Zivkovic and his attorneys to decide for you, you may consider whether those lawyers may have divided loyalty because they also have to defend Zivkovic against the claims asserted by Valbella that Zivkovic stole money from the Valbella Midtown and from his fellow employees.

Your receipt of this notice does not indicate any entitlement to recovery, as the outcome of the legal action has not yet been determined. If Plaintiff prevails in this case, you will also share in any proceeds from a settlement or judgment favorable to the Collective Action group if the

settlement or judgment provides for compensation to someone in your specific factual circumstance.

You have the right to retain your own counsel at any time if you wish to independently pursue your claims against the Defendants.

6. YOUR ATTORNEY

If you join the lawsuit, you will become a “party plaintiff” and, unless you inform Plaintiff or the Court in writing otherwise, will be represented by D. Maimon Kirschenbaum and Josef Nussbaum of Joseph and Kirschenbaum LLP, who represent Plaintiff in this lawsuit.

The attorneys’ fee arrangement for this case provides that Plaintiff’s counsel are handling this matter on a contingency basis, *i.e.*, that the attorneys’ fees and costs will **be determined on a percentage basis based on the recovery** on behalf of Plaintiff. The agreement further provides that at the conclusion of the case, Plaintiff’s counsel will make an application to the Court for the recovery of fees and costs, **that the Court has discretion of the amount of fees to award**, and that the fees may be as much as 33 1/3% of any settlement fund or judgment, after the deduction of costs and expenses.

You may wish to direct questions you have to Plaintiff’s Lawyers:

D. Maimon Kirschenbaum, Esq.
Josef Nussbaum, Esq.
Joseph & Kirschenbaum, LLP
32 Broadway, Suite 601
New York, New York 10004
(212) 688-5640
maimon@jk-llp.com
jnussbaum@jk-llp.com

You have the right to retain your own counsel at any time if you wish to independently pursue your claims against the Defendants.

7. NO LEGAL EFFECT IN NOT JOINING THIS SUIT

If you choose to not join this lawsuit, you will not be affected by any settlement or judgment rendered in this case, whether favorable or unfavorable.

Please do not write or call the Court about this notice.

Although the Court has approved the sending of this notice, the Court expresses no opinion on the merits of this lawsuit and has not made any ruling about the merit or lack of merit of this case.

Dated: August , 2017

EXHIBIT B

CONSENT TO JOIN

I WANT TO JOIN THE LAWSUIT entitled Zivkovic, on behalf of himself and other similarly situated v. Laura Christy LLC et al, which is pending in the United States District Court for the Southern District of New York, New York in which claims are asserted under the Fair Labor Standards Act and New York Labor Law.

I understand that this lawsuit seeks unpaid wages that may be owed to me and that by joining this lawsuit I will become a plaintiff pursuant to the Fair Labor Standards Act and New York Labor Law. I agree to be bound by any adjudication in the lawsuit whether it is favorable or unfavorable. I understand that, by filing this form, I am voluntarily becoming a party plaintiff to this action, with the obligations and rights of a plaintiff in a case explained in this form. I authorize the representative plaintiffs or plaintiff's attorneys to file this consent with the Clerk of Court. I understand that unless I inform the Court in writing, I will be represented by Mr. Zivkovic's Counsel, Joseph & Kirschenbaum LLP.

Date

Signature

Phone Number*

Full Legal Name (Print)

E-mail address*

Mailing Address (street)*

Position(s) held*

Mailing Address (city, state, zip code)*

*** This information will not be
filed with the Court but will
be provided to Plaintiffs' Counsel**

**QUESTIONS? Contact:
Josef Nussbaum, Esq. at (212) 688-5640 or jnussbaum@jk-llp.com**